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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

HASANI LAMONT GRAY,

Defendant and Appellant.

B289625

(Los Angeles County
Super. Ct. No. BA463739)

APPEAL from a judgment of the Superior Court of Los Angeles County, Katherine Mader, Judge. Affirmed.

Aurora Elizabeth Bewicke, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Kathy S. Pomerantz, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant and appellant Hasani Lamont Gray of possession of cocaine for sale and possession of methamphetamine for sale, and the trial court sentenced him to three years in county jail. On appeal, Gray contends: (1) his constitutional rights to due process and confrontation were violated individually and cumulatively as a result of (a) the trial court's abuse of discretion in erroneously overruling objections to the prosecution's use of leading questions; (b) prosecutorial error in asking too many leading questions, which Gray argues allowed the prosecution to improperly present facts not in evidence; and (c) ineffective assistance of defense counsel in not objecting sooner and more frequently to the prosecution's use of leading questions; (2) this court should conduct an independent review of the sealed transcript of the trial court's in camera hearing conducted pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*); and (3) due process and equal protection require reversal of the court operations assessments, criminal conviction assessments, and restitution fine. We affirm.

PROCEDURAL BACKGROUND

An information charged Gray with possession of cocaine for sale (Health & Saf. Code, § 11351; count one),¹ possession of methamphetamine for sale (§ 11378; count two), and possession

¹ All undesignated statutory references are to the Health and Safety Code.

of marijuana for sale (§ 11359, subd. (b); count three).² The information further alleged Gray previously sustained two prior prison term enhancements (Pen. Code, § 667.5, subd. (b)).³ The jury convicted Gray of counts one and two, and the court sentenced him to three years in county jail, consisting of a three-year midterm on count one.⁴

Gray timely appealed.

FACTUAL BACKGROUND

On the evening of December 2, 2017, several officers of the Los Angeles Police Department, including Officer Alba Mendez, were positioned on a rooftop in Skid Row on the look-out for narcotics activity. Using binoculars, Officer Mendez observed Gray engage in three hand-to-hand narcotics transactions over the course of approximately 30 minutes. In each instance, Mendez observed Gray reach into his pocket and give the buyer a small white circular object in exchange for money. One of the

² Count three was later dismissed in the interest of justice under Penal Code section 1385.

³ The information also alleged Gray sustained two prior convictions within the meaning of section 11370.2, subd. (a), but statutory changes in the law eliminated the impact of these priors. (See Health & Saf. Code, § 11370.2, as amended by Senate Bill No. 180 (2017-2018 Reg. Sess.))

⁴ The court sentenced him to a concurrent three-year upper term on count two and did not impose sentence on the prison priors.

individuals immediately took the white object Gray gave her and smoked it.

Officer Frank Vidaure, who was assigned to the “chase team,” received orders from the observing officers to detain Gray. After detaining Gray, Officer Vidaure recovered a plastic baggy containing an off-white substance, a closed metal container containing six bindles of a crystalline substance, and approximately \$182. The parties stipulated the plastic baggy contained .31 grams of cocaine base and the closed metal container contained 1.15 grams of methamphetamine. Officer Mendez testified these were usable amounts of each substance.

Gray did not testify or present witnesses on his behalf.

DISCUSSION

1. Assuming Gray’s Constitutional Rights Were Violated, The Error Was Harmless

Gray argues the “transcript is rife with examples of the prosecutor soliciting the People’s desired-for answers from [Officers Mendez and Vidaure] without first laying any proper foundation.” Gray notes that on re-direct, the prosecutor asked Officer Mendez 35 substantive questions, only two of which Officer Mendez answered with something other than “yes” or “no.” He contends that “[w]hile the trial court sustained a few of defense counsel’s objections, it largely permitted the prosecutor to present its case through the continuous use of leading questions.” In total, defense counsel made eight objections on leading grounds. The court sustained three and overruled five. Defense counsel did not request a continuing objection to the use of leading questions. Gray argues: “Given the trial court overruled

several of defense counsel's objections to the leading questions, it would have been futile for counsel to present further objections based on prosecutorial misconduct."

Gray thus contends his constitutional rights to due process and confrontation were violated as a result of (a) the trial court's abuse of discretion in erroneously overruling objections to the prosecution's use of leading questions, (b) prosecutorial error in asking too many leading questions, and (c) ineffective assistance of counsel in not objecting more frequently to the use of leading questions. He argues any of these three individual errors requires reversal, as does the cumulative effect of the errors.

Assuming, without deciding whether, the trial court, prosecution, or defense counsel erred by asking or allowing leading questions, we find any error harmless. This was a simple case. Officer Mendez observed Gray engage in three drug transactions over the course of 30 minutes. Officer Vidaure detained Gray and found him in possession of two substances, which the parties stipulated were cocaine and methamphetamine. Officer Mendez testified Gray possessed usable amounts of each substance. These facts established the elements of each offense and were properly introduced in evidence without the use of leading questions. We therefore find any purported error harmless beyond a reasonable doubt.

(*Chapman v. California* (1967) 386 U.S. 18, 24 (*Chapman*).)

We find unavailing Gray's argument that any use of leading questions improperly bolstered the credibility of Officers Mendez and Vidaure. As noted above, the critical evidence establishing the elements of the offenses was properly adduced through non-leading questions and a stipulation.

In addition to finding the purported errors harmless under *Chapman*, we also find them harmless when viewed cumulatively. “Taking all of [Gray’s] claims into account, we are satisfied [he] received a fair adjudication.” (*People v. Rivas* (2013) 214 Cal.App.4th 1410, 1437.)

2. *Pitchess* Discovery

Gray filed a pretrial discovery motion pursuant to *Pitchess*, *supra*, 11 Cal.3d 531, seeking the discovery of confidential personnel records for Los Angeles Police Department Officers Mendez, Leon, Vidaure, and Correa. On the date of the *Pitchess* hearing, Gray’s attorney stated although she initially filed the motion with respect to all four officers, her real concern was with Officers Mendez and Leon. In light of this comment, the court found good cause to conduct an in camera interview of the Los Angeles Police Department’s custodian of records concerning personnel records of Officers Mendez and Leon. The court held the in camera hearing and concluded there was no discoverable evidence to disclose.

Gray asks us to independently review the transcript of the *Pitchess* hearing. The Attorney General does not oppose this request. “*Pitchess* rulings are reviewed for abuse of discretion.” (*People v. Winbush* (2017) 2 Cal.5th 402, 424.) We have reviewed the *Pitchess* transcript and find no abuse of discretion in the trial court’s ruling.

3. Gray Has Forfeited His Challenge to the Assessments and Restitution Fine

The trial court imposed two \$40 court operational assessments (Pen. Code, § 1465.8, subd. (a)), two \$30 criminal conviction assessments (Gov. Code, § 70373), and the minimum \$300 restitution fine (§ 1202.4, subd. (b)(1)). In supplemental briefing, Gray challenges the imposition of the assessments and restitution fine on due process and equal protection grounds. Relying on *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*), he asks that we reverse the assessments and impose a stay of the restitution fine until the People prove he has the ability to pay.

Gray did not object in the trial court based on inability to pay. He argues the issues are not forfeited on appeal because *Dueñas* had not yet been decided when he was sentenced, and consequently any objection in the trial court would have been futile. The Attorney General argues Gray has forfeited the arguments. Our colleagues in Division Eight of this Appellate District recently addressed this issue and found that failure to object in the trial court resulted in forfeiture of this issue, and we agree with their analysis and holding. (*People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1153-1155 (*Frandsen*)). Nothing foreclosed Gray from making the same request for an ability to pay hearing in the trial court as the defendant in *Dueñas* made. (*Dueñas*, *supra*, 30 Cal.App.5th at p. 1162.) As *Frandsen* points out: “*Dueñas* was foreseeable. *Dueñas* herself foresaw it.” (*Frandsen*, *supra*, 33 Cal.App.5th at p. 1154.) We therefore reject Gray’s argument that any objection would have been futile.

DISPOSITION

The judgment is affirmed.

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CURREY, J.

WE CONCUR:

MANELLA, P. J.

WILLHITE, J.